

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 6424 of 1992

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
  2. To be referred to the Reporter or not? : NO
  3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
  5. Whether it is to be circulated to the Civil Judge? : NO

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PATEL KANJIBHAI LALJIBHAI

Versus

STATE OF GUJARAT  
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Appearance:

MR S.K PATEL for YOGESH S LAKHANI  
for Petitioners Nos. 1-4  
MR SP SEN AGP for Respondent No. 1-3  
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CORAM : MISS JUSTICE R.M.DOSHIT  
Date of decision: 08/08/2001

ORAL JUDGEMENT

Heard the learned advocates.

The petitioners before this Court are the successors in title of one Shri Harijan Bhoja and challenge the order dated 20th April, 1992 made by the Collector, District-Kachchha in Revision Application No. 20 of 1987 and the order dated 27th July, 1992 of the State Government [Special Secretary, Revenue Department (Appeals)] made in Revision Application No. 16 of 1992.

It appears that on 30th October, 1982, said Shri Harijan Bhoja was granted a piece of land bearing Survey No. 114/2, admeasuring 5 Acres, situated at village Sukhpar, Taluka-Bhuj, District-Kachchha, for cultivation as a new tenure land. On an application made by Shri Harijan Bhoja, under order dated 6th January, 1987 made by the Deputy Collector, the said Shri Harijan Bhoja was granted permission to sale the said land on payment of premium @ 75 per cent of the market price. The market price was determined at Rs. 1450 per Acre, and accordingly, the said Shri Harijan Bhoja was ordered to pay premium of Rs. 5,437..50 paise. Pursuant to the said permission, the land was sold to the present petitioners for cultivation on 29th January, 1987. The said order of 6th January, 1987 was taken into suo motu revision by the District Collector, Kachchha by issuing a notice to show cause to said Shri Harijan Bhoja on 29th December, 1987. The permission granted by the Deputy Collector was sought to be set-aside on the ground that (a) the Deputy Collector had no authority to make such order; (b) while granting the permission, the relevant Government Resolutions were not taken into consideration and (c) the permission to sale was asked with a view to profiteering. Pursuant to the said show cause notice, under order dated 30th April, 1988 made by the Collector, Kachchha, the permission granted on 6th January, 1987 was set-aside. Feeling aggrieved, the said Shri Harijan Bhoja preferred Revision before the State Government. The said revision was partly allowed under the order dated 7th October, 1989. The matter was remanded for hearing afresh, after giving notice to the petitioners-the successors in title of said Shri Harijan Bhoja. After the remand, under order dated 20th April, 1992, the permission granted by the Deputy Collector on 6th January, 1987 was set-aside. The said order was confirmed by the State Government in Revision Application No. 16 of 1992. Feeling aggrieved, the petitioners have preferred the present petition.

It appears that the said Shri Harijan Bhoja had applied for permission to sale the land on the ground

that he was of advanced age and was unable to cultivate the land. The Collector has set-aside the said order dated 6th January, 1987 on the ground (a) that the relevant Government Resolutions were not considered by the Deputy Collector; and (b) that the permission to sell the land was sought with a view to profiteering. Neither of the said grounds appear to be sustainable.

I have perused the relevant Government Resolutions dated 16th March, 1982 and 13th July, 1983. The above referred permission dated 6th January, 1987, appears to be in consonance with the instructions issued by the Government under the above referred Resolutions. In my view, therefore, the said permission could not have been set aside merely because the Resolution of 16th March, 1982, has not been referred to in the permission dated 6th January, 1987. The permission, indeed, had been granted in consonance with the Government instructions and on condition of payment of premium at the rate of 75% of the market value as provided in the Government Resolution dated 13th July, 1983. Further, even after the transfer, the land has been maintained as new tenure land, i.e., the land is still subject to the restriction contained in section 43 of the Tenancy Act. I, therefore, see no justification in the action of the Collector in setting aside the permission granted by the Deputy Collector on 6th January, 1987. The State Government has fallen into further error by examining the validity of the re-grant made to the aforesaid Harijan Bhoja Mura in the year 1982. The question of validity of the said re-grant made in the year 1982 was not the matter at issue and the permission for sale granted to the said Harijan Bhoja Mura could not have been cancelled on the ground that the grant made in his favour was bad or unwarranted.

In view of the above discussion, the petition succeeds. The impugned order dated 27th July, 1992 of the State Government (Annexure-E to the petition) and the order dated 20th April, 1992 of the District Collector, Kachchha (Annexure-D to the petition) are quashed and set aside. Rule is made absolute. The parties shall bear their own costs.

[Ms. R.M Doshit, J.]

Prakash\*